

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

EDMUND SAENZ VASQUEZ, 1105529,	§	
	§	
v.	§	Civil Action No. 3:04-CV-2694-L
	§	
DOUGLAS DRETKE, DIRECTOR,	§	
TDCJ-CID,	§	
Respondent.	§	

ORDER

Before the court is Edmund Saenz Vasquez's ("Vasquez") Petition for a Writ of Habeas Corpus By a Person in State Custody, brought under 28 U.S.C. § 2255. Pursuant to 28 U.S.C. § 636(b), and an order of the court in implementation thereof, this action was referred to the United States magistrate judge for proposed findings and recommendation. On June 7, 2006, the Findings, Conclusions and Recommendation of the United States Magistrate Judge ("Report") were filed.

Vasquez, an inmate in the Texas Department of Criminal Justice, Correctional Institutions Division, was convicted on May 23, 2002, of possession with intent to deliver over 400 grams of cocaine. He was sentenced to 50 years confinement. He did not appeal his conviction. On January 22, 2004, Vasquez filed a state application for writ of habeas corpus. On October 13, 2004, the Court of Criminal Appeals denied the application. On December 16, 2004, Vasquez filed his petition for habeas corpus relief, contending that: (1) he was denied the right to appeal; (2) the evidence against him was obtained through an illegal search and seizure; and (3) his attorney was ineffective in failing to object to various issues during sentencing.

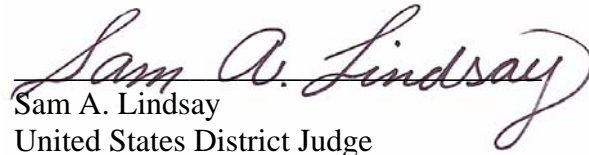
The magistrate judge found that Vasquez's petition for habeas corpus relief was untimely, as it was filed after the one-year statute of limitations established by the Antiterrorism and Effective

Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2244(d)(1). He also determined that Vasquez failed to show rare and exceptional circumstances that would justify equitable tolling in this case. The magistrate judge recommends that the petition for writ of habeas corpus be dismissed with prejudice as barred by the one-year limitation period; and that all pending motions be denied.

Vasquez filed Petitioner's Objections to the Magistrate's Findings, Conclusions and Recommendations ("Objections") on July 13, 2006. He maintains that his conviction was unconstitutional and it would be unreasonable to apply the AEDPA provisions against him.

After making an independent review of the pleadings, file and record in this case, the findings, conclusions and recommendation of the magistrate judge, and the objections thereto, the court determines that the findings and conclusions of the magistrate judge are correct. They are therefore accepted as those of the court. Accordingly, the court **overrules** Vasquez's Objections, **denies** his Petition for a Writ of Habeas Corpus By a Person in State Custody, and **dismisses this action with prejudice** as time-barred.

It is so ordered this 27th day of September, 2006.


Sam A. Lindsay
United States District Judge